U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 10 August 2006

CASE NO.: 2005-WIA-6

In the Matter of:

MCDOWELL COUNTY ACTION NETWORK
Complainant

v.

UNITED STATES DEPARTMENT OF LABOR
Respondent

DECISION AND ORDER GRANTING RESPONDENT'S
MOTION FOR SUMMARY DECISION
AND ORDER CANCELLING HEARING

A hearing in this matter is scheduled before the undersigned on August 31, 2006 in Charleston, West Virginia. This case arises under the School-to-Work Opportunities Act of 1994 (STW), 20 U.S.C. § 6101, *et seq*.,[1] and the regulations governing grants and their audit requirements, 29 C.F.R. §§ 95.1 and 96.1, *et seq*..

Background and Procedural History

The STW provides employment and training services for youths through grants awarded to states and local partnerships on a competitive basis. The Department of Labor (Respondent) publishes Solicitations for Grant Applications in the Federal Register to initiate the STW grantee selection process. McDowell County Action Network (Complainant) submitted an application for funding under the STW and based on this application, the reviewing Grant Officer (GO) designated Complainant as an STW grantee. Complainant received a total of $1,473,199 in STW funds. AF 82.[2] In accordance with §§ 95.26 and 95.27, Complainant retained the services of Sullivan, Ware & Hall, PLLC (SWH), certified public accountants, to conduct the audit required by the terms of the STW grant. AF 21-26. On March 23, 2005, the National Audit and Evaluations Office informed Respondent that SWH concluded that for the audit period ending June 30, 2002, Complainant charged $50,000 in undocumented administrative fees, secretarial fees, and supplies to the STW grant. *Id.* at 19-20.

On May 12, 2005, the GO issued an Initial Determination letter (ID) that, in accordance with the applicable regulations, identified the $50,000 as subject to disallowance. *Id.* at 12-18.

[1] The authority provided under the STW terminated on October 1, 2001. 20 U.S.C. § 6251.
[2] On October 7, 2005, the Notice of Receipt of Request for Hearing and Prehearing Order compelled the submission of the Administrative File, hereinafter designated AF, to the court.

The ID provided Complainant with thirty days within which to reply with documentation justifying the expenditures. *Id*. at 13. Complainant did not respond to the ID. On August 24, 2005, the GO issued a Final Determination letter (FD) that disallowed the $50,000 and sought repayment of the same. *Id.* at 5-11. The FD stated that applicants may appeal final determinations by DOL officials responsible for audit resolutions to the Office of Administrative Law Judges (OALJ), and request review of the decision by an administrative law judge (ALJ). §§96.61, 96.63.

On September 19, 2005, Complainant appealed to the OALJ, stating that "the administrative deficiencies and $50,000 in questioned costs" at issue were corrected, and that it was "prepared to provide appropriate information and documentation" corroborating its position. However, Complainant failed to comply with the October 7, 2005 Notice of Receipt of Request for Hearing and Prehearing Order directing that it file a Notice of Intent to Participate within thirty days. As a result of Complainant's failure to comply, on November 25, 2005, an Order to Show Cause was issued directing that Complainant show why default judgment should not be entered against it in this matter. On December 8, 2005, Complainant filed its response via facsimile, stating, in part, that it intended to submit supporting documentation to resolve all contested issues. On February 8, 2006, the undersigned conducted a conference call with both parties, establishing a sixty day period within which Complainant was to provide documentation to support its position. The GO was instructed to contact the court at the expiration of the sixty day period. Complainant did not submit documentation.

On April 28, 2006, the undersigned issued a Notice of Hearing and Prehearing Order scheduling the hearing for August 31, 2006. On July 7, 2006, Respondent filed via facsimile a Motion for Summary Decision (Motion) pursuant to 29 C.F.R. §§18.40 and 18.41. In its Motion, Respondent asserts that Complainant has failed to raise a genuine issue of material fact that the disallowance of $50,000 in funds was unreasonable. Complainant's leave to respond to Respondent's Motion expired on July 19, 2006. Complainant has not filed a response as of the date of issuance of this order.

Standard of Review

Any party may, at least twenty days before the date fixed for any hearing, move for summary decision on any part of the proceeding. §18.40(a). Within ten days of service of the motion, any other party may serve opposing affidavits or countermove for summary decision. *Id*.

Pursuant to §18.40(d), the ALJ may issue summary decision if the "pleadings, affidavits, [and] material obtained by discovery or otherwise… show that there is no genuine issue as to any material fact." The Administrative Review Board (ARB) has stated that a material fact is "one whose existence affects the outcome of the case," and that a genuine issue exists when "the nonmoving party produces sufficient evidence of a material fact so that the factfinder is required to resolve the parties' differing versions at trial." *Reddy v. Medquist, Inc*., ARB No. 04-123, ALJ 2004-SOX-35 (Sept. 30, 2005), slip op. at 4.

When a motion for summary decision is made and supported, "a party opposing the motion may not rest upon mere allegations or denials of such pleadings. Such response must set

forth specific facts showing that there is a genuine issue of fact for hearing." §18.40(c). Once the moving party demonstrates an absence of evidence supporting the non-moving party's position, "the burden shifts to the non-moving party to establish the existence of an issue of fact that could affect the outcome of the litigation." *Reddy,* slip op. at 4-5.

As required by §18.40(a), Respondent's Motion was timely submitted more than twenty days before the hearing. The evidence of record demonstrates that Complainant was aware of the administrative and regulatory requirements to which it became subject upon becoming a grant recipient. AF 27-28. The evidence also demonstrates that the STW grant was charged $50,000 in fees for which independent auditors could not locate supporting documentation. Based on this assessment and upon Complainant's failure to document the contested expenditures, the GO conducted a review and reasonably concluded that these funds were subject to disallowance.

The evidence shows that despite opportunities available at multiple stages of these proceedings, Complainant has consistently failed to provide any evidence to support its position that the funds in question should not be disallowed. The time provided by §18.40(a) for response to Respondent's Motion has expired and no response has been received. Therefore, Complainant has failed to carry his burden of establishing that there is sufficient evidence of a material fact at issue, such that the undersigned must resolve the parties' differing versions at trial. Accordingly, Respondent's Motion for Summary Decision is granted.

ORDER

IT IS ORDERED THAT Respondent's Motion for Summary Decision is GRANTED, and Complainant's appeal is hereby DISMISSED with prejudice. The hearing scheduled in Charleston, West Virginia on August 31, 2006 is CANCELLED.

A

DANIEL L. LELAND
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: To appeal, you must file exceptions ("Exception") with the Administrative Review Board ("Board") within twenty one (21) days after receipt of the administrative law judge's decision. *See* 29 C.F.R. §96.63(b)(4). The Board's address is: Administrative Review Board, U.S. Department of Labor, Room S-4309, 200 Constitution Avenue, NW, Washington, DC 20210. Your Exception must specifically identify the procedure, fact, law, or policy to which exception is taken. You waive any exceptions that are not specifically stated.

If no Exception is timely filed, the administrative law judge's decision becomes the Final Decision and Order of the Secretary of Labor pursuant to 29 C.F.R. §96.63(b)(4). Even if an Exception is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board notifies the parties within thirty (30) days of the filing that it has accepted the case for review. *See* 29 C.F.R. §96.63(b)(4).